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Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 23 April 2002 from the Permanent Representative of Italy to the United Nations addressed to the Chairman of the Committee

Following the Chairman's note dated 7 March 2002, please find herewith the report by Italy, in Italian and English, pursuant to resolution 1390 (2002), to the Security Council Committee established pursuant to resolution 1267 (1999) (see annex).

(Signed) Sergio Vento
Ambassador

02-35177 (E) 060502

Annex to the letter dated 23 April 2002 from the Permanent Representative of Italy to the United Nations addressed to the Chairman of the Committee

Report by Italy, pursuant to Security Council resolution 1390 (2002), to the Security Council Committee established pursuant to resolution 1267 (1999)

Introduction

The present report illustrates the measures adopted in Italy to implement Resolution 1390/2002, which establishes a series of sanctions against the Taliban, Al Qaida, Usama Bin Laden and their associates, and decrees the freezing of their assets and a ban on entry and transit and on the supply of arms and related materiel.

This report complements and up-dates the report submitted on 27 December 2001 to the Counter-Terrorism Committee of the Security Council, in which detailed and more in-depth information was provided on the subject. As indicated also in the guidelines provided by the Committee, anyone seeking more detailed information on the fight against international terrorism, as conducted by Italy, should refer to that report.

The most significant elements in each of the three chapters into which the present report has been divided include the following:

With regard to the freezing of assets, it should be noted that, as described later in more detail, the action taken to combat the funding of international terrorism has produced excellent results. This is by virtue of the measures adopted further to the relevant UN Resolutions and EU Regulations, and the seizure orders implemented by the judiciary. As of 6 March 2002 the assets frozen or seized through such actions were in excess of 4.2 million euros.

With respect to the arms embargo, Italy already has a highly effective legislation in place, which dates from 1990. Such legislation envisages a strict system of controls for the imports and exports of arms, and the general principles of the law include a ban on exports that do not comply with the measures in place to combat terrorism. Moreover, exports

of materials included in the national list of arms and related materiel are only permitted if the transactions are being carried out with governments or with companies authorised by the government of the recipient country.

The system is also subject to regular up-dates to ensure full compliance with the international agreements Italy has signed on the issue. Also deserving of mention are the downstream measures put in place in the transportation sector, whether through international agreements or domestic legislation, to regulate the transfer of arms and explosives by all possible access routes (land, air or sea).

Finally, the situation regarding visa denials and bans on entry and transit, merits a specific note. Italy is one of the signatory countries to the Schengen Treaty, through which a series of functions linked to the granting of visas, that were previously carried out at the national level, have been devolved to a centralised system (Schengen Information System or SIS).

Within this framework, some technical and operational difficulties have been encountered which have prevented the SIS from being used as fully as it might. These difficulties are the result of gaps in the identification details of the individuals included in the lists drawn up in accordance with UNSCR 1267/1999, 1333/2000 and 1390/2002. Italy has raised this issue formally with the competent Schengen Treaty bodies with a view to finding a suitable solution that can be applied in a uniform manner in all the signatory countries. It should be underlined that this is a technical question that does not in any way arise from a political position expressed by any of the Schengen member countries. It underlines, on the other hand, the importance of defining effective procedures and arrangements for inclusion in the lists of individuals subject to sanctions, in order to ensure that they can be put to the fullest use possible.

a) Freezing of assets

Article 2 of Commission Regulation (EC) 467/2001 implementing United Nations Security Council Resolutions 1267/1999 and 1333/2000, provides for the freezing of all capital and all financial resources belonging

to any natural or legal person, entity or organisation named by the Sanctions Committee established by the United Nations Security Council Resolution 1267/1999. Under Decree-Law 353/01 enacted as law No. 415 of 27 November 2001, (Penalties for violations of the measures adopted against the Afghan Taliban faction), Italian legislation has put in place administrative penalties for offences in violation of Regulation 467, taking on board the list of entities and persons subject to these provisions and subsequent updates thereof.

Regulation (EC) 2580/2001, implementing United Nations Security Council Resolution 1373/2001, provides for the freezing of capital and other financial assets or economic resources of persons committing or attempting to commit, participating in or facilitating the commission of any act of terrorism. Section 2 of Decree-Law No.369/01, enacted as law 431 of 14 December 2001, provides that any acts performed in violation of the provisions prohibiting the export of goods and services, involving the freezing of capital or other financial resources set out in regulations adopted by the European Union Council, also in implementation of UN Security Council Resolutions, are null and void.

The updated data at 6 March 2002 show that 88 individuals and entities had had their assets frozen, of which 47 bank accounts, 33 insurance policies and 4 investment funds. The total value of the frozen assets was € 204,419.09 and $ 298,189.11 (of which € 108,924.40 in bank deposits, € 54,271.98 in insurance policies and € 54,271.98 in investment funds).

Furthermore, the Bank of Italy has issued instructions to financial intermediaries to notify the *Ufficio Italiano Cambi* – UIC - of (the Italian Financial Intelligence Unit) all suspicious transactions linked in any way whatsoever to individuals, entities or undertakings connected with the events of 11 September in the United States, referring to EC Regulations 467 and 1354 of 2001, and the list drawn up by the Basle Committee on Banking Supervision. The UIC, as per the instructions issued to banks and financial intermediaries and published in the Official Gazette, has posted on its own Internet site (www.uic.it/liste/terrorismo.htm) the list of entities and individuals to be reported.

The UIC may provisionally freeze funds deemed suspect for 48 hours, by issuing an order subject to confirmation by the courts, which may then order the assets to be seized. Under Italian legislation, economic assets and financial resources linked to terrorist organisations can be seized through a criminal sequestration order. In this case, the sequestration order is issued by the courts (the public prosecutor or the judge) as part of a criminal proceeding for crimes linked to international terrorism. The purpose of a criminal sequestration order could be to gather evidence (when it involves the seizure of economic and financial assets that can demonstrate the commission of a crime) or it may be for preventive purposes (when the economic or financial assets might be used to enable the commission of further crimes if left at the disposal of the persons against whom criminal investigations are being conducted or against whom criminal charges have been laid). The criminal sequestration order may be issued in respect of any asset, resource or item of property. In other words cash, bank accounts, securities and commercial assets, etc. provided that these are goods or resources linked to the criminal activities forming the matter under criminal investigation or ongoing criminal proceedings.

In order to make the criminal sequestration order more effective in the case of international terrorism, decree law 374 of 18 October 2001 (enacted as law No 438 of 15 December 2001) introduced two new crimes into the criminal code (article. 270 bis and art. 270 ter) in order to create a crime of conspiracy to commit acts of international terrorism or to provide assistance to criminal conspirators. These new crimes make it possible to punish anyone promoting, creating, organising, managing or financing an organisation intended to commit acts of violence for the purposes of international terrorism, as well as any conduct by persons aiding and abetting members of any such terrorist organisations (by providing them, safe harbour, board, lodging, means of transport or communication). The same decree law No 374 of 18 October 2001 expressly provides that for the purposes of criminal law, acts of violence against a foreign state, institution or international organisation are considered to be an act of terrorism. Decree law No 374 of 18 October 2001, lastly, increased the powers of the judicial police to investigate crimes committed for terrorist purposes, governing infiltration by the police and intercepting

communications or conversations as a preventive measure, giving greater freedom than allowed under the current code of criminal procedure. This has created an effective system for investigating and prosecuting terrorist acts specifically targeted against foreign states or international organisations, to make it possible to more rapidly identify economic and financial assets and resources belonging to terrorists, and make it possible to issue criminal sequestration orders against them once they have been identified.

Thanks to such criminal law provisions, it has been possible to seize economic, financial and commercial assets in the course of investigations conducted by the public prosecutor's offices against individuals connected with international terrorist activities. The total value of assets and property seized is to date of US$ 117,624 and € 4,073,096.91, belonging to the persons and/or organisations under investigation. For the most part they refer to current account bank deposits, guaranteed loans, letters and/or lines of credit.

b) Prohibition on entry and transit (Border control and visas)

It should be noted that Italy is a member of the Schengen Agreement group of countries. Procedures for issuing visas have therefore been transferred to this international co-operation system and no longer fall within Italian national jurisdiction. For further detailed information, Italy would like to refer to the Report which the Schengen Agreement Presidency will submit on this point.

The following should be noted, however.

Only 38 out of 212 individuals included in the lists referred to in UNSCR 1390/2002, would appear at first examination to meet the minimum requirements for inclusion in the Schengen Information System (SIS): i.e. date or at least year of birth. With respect to names for which the existing identification data is potentially satisfactory, a common procedure applicable to all the Schengen countries will nevertheless need to be agreed, in order to make recourse to the SIS possible. Italy has underlined actively in the competent European fora the need to swiftly introduce all technical and regulatory modifications needed, in order to make the system

as effective as possible with respect to the stipulations of UNSCR 1390.

The competent Italian authorities, furthermore, are examining what further measures could be eventually introduced at the national level, if necessary and possible even before the said operational adaptations of the Schengen system have been finalized

c) Prohibition on the supply and sale of weapons

Law No.185 of 9 July 1990 introduced control mechanisms and documentary guarantees, to ensure that the individuals, groups, undertaking and entities indicated in UNSCR 1390/2002 are denied the capability to acquire arms and related materiel from Italy.

The general principles of the law stipulate that exports which are in contrast with the aim of combating terrorism are prohibited. Furthermore, the export of items included in the national register of arms and related materiel is only permitted if such activities are transacted with governments or companies authorised by the government of the consignee state.

In order to ensure that this condition is met and avoid any possible triangulation, all applications for the export of arms and related materiel to any country not belonging to NATO must, among other things, be accompanied by an end-user certificate. In this document, the foreign government declares that it is importing the materiel for domestic use and that it will not be re-exported without the consent of the Italian government.

The signature on the certificate must be authenticated by the Italian diplomatic authority accredited to the issuing government. Authentication must be accompanied by a statement certifying that the signing authority is the authority empowered to issue the document in question. When the operation is completed, the exporting company is required to produce certification or an equivalent documentation, to show that the materiel has reached its destination.

When instructing applications for permission to negotiate export contracts, due consideration is also given by the competent Italian authorities to the European Code of Conduct for Arms Exports and, in particular, to criterion 6(a) the conduct of the buyer country in supporting or encouraging terrorism, and to criterion 5(b) referring to the risk that the goods to be exported may be used against the exporting country's own armed forces or those of friendly and/or allied countries.

With regard to controls on the export of weapons which do not fall within the scope of law No.185 of 9 July 1990 (common firearms, weapons of war, their parts, munitions and explosives for civil use), specific regulations have been issued by the Ministry of Internal Affairs. In its latest version, the applicable Regulation stipulates that clearance by the said Ministry is required for all applications to export common firearms, weapons of war, spare parts for them and related munitions and explosives to:

- countries against whom procedural limitations have been imposed, i.e. countries subject to an embargo on the export and transit of battlefield materiel as a result of the imposition of a total or partial embargo on the supply of battlefield materiel by the United Nations and/or appropriate bodies of the European Union, or whose governments have been responsible of certified violations of human rights;
- countries subject to an embargo on exports decided by other European countries and against whom the more complex assessment procedure referred to in the European Code of Conduct (approved by the European Union Council) applies;
- member countries of the Economic Community of West African States (ECOWAS), signatories to a moratorium on the introduction into their territories of small arms, including smooth-bore weapons.

It should be noted that the issuance of the ministerial clearance, is subject to the advice of the Unit for the Authorisation of Arms Materiel (UAMA) at the Ministry of Foreign Affairs and to the previous clearance from the Central Directorate for Crime Prevention Police.

With regard to dual-use items, the rules and procedures set out in EC Regulation 1334/2000 on the control of exports of these items are in compliance with the international commitments undertaken in the non-proliferation fora of which Italy is a member. The scrutiny of applications submitted and the granting of export licences fall under the responsibility of the Ministry for Productive Activities (Industry and Trade). In granting a licence, the said Ministry acts on the basis of the advice received by the other Ministries concerned and takes full account of all other elements deriving from sanctions imposed under UN Resolutions.

Special mention should also be made of the wide-ranging legislation enacted by Italy for the transportation of dangerous goods, which covers all forms of transportation.
In respect of transportation by rail, the matter is governed by the E.C. Directive 96/49 (incorporated into Italian legislation by Decree-Law 41 of 1999) and by the Ministerial Regulation Decree of 27 February 2002. The European Agreement concerning the international carriage of dangerous goods by road, ratified by law 1839/1962 and law 502/1981, covers the transportation of explosive materials by road.

In respect of transportation of dangerous goods by sea and the penalties imposed by arms embargos, the transit and stay of national and foreign merchant vessels may be prohibited at any time and in any place inside or outside territorial waters when this is required in the interests of national defence (law No.612/1912, *'Provisions for the transit and stay of merchant ships along the Italian national coasts*, and art.83 of the Navigation Code *'Ban on transit and stay'*). Italy has also ratified, with law No.422/1989, the *'Convention for the suppression of unlawful acts against the safety of maritime navigation ("Lauro Convention")*'. Article 3 of the Convention provides criminal penalties for Captains wilfully providing false navigation information in order to conceal the nature of the cargo (arms or arms related materiel), during the exercise of their right of passage across Italy's territorial sea (12 miles from the baseline). With regard to the loading, unloading and transportation of explosives in Italian ports, the provisions of the Ministerial Decree of 4 May 1995 '*Procedures for the issue of authorisation to unload and transport by sea or the issue of clearance for the unloading of dangerous cargoes*' apply.

Lastly, the transportation of dangerous goods by air is governed by the legislation set out in Annex XVIII of the ICAO Civil Aviation Regulation, with which all airlines comply under Ministerial Decree No.55/1983. The local Airport Authorities are responsible for the issuance of clearances for the transport of weapons, explosives or munitions on scheduled flights, after ascertaining the conformity of the authorisation issued by the Police Authorities.